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In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 734

LEWIS REYNOLDS, PETITIONER

v.

THE UNITED STATES

ON A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Claims (R. 9–13) is not yet officially reported.

JURISDICTION

The judgment of the Court of Claims was entered November 6, 1933 (R. 13–14). The petition for a writ of certiorari was filed January 20, 1934 (R. 14), and was granted April 2, 1934 (R. 15). The jurisdiction of this Court rests upon Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

Whether Section 202 (10) of the World War Veterans' Act of 1924, as amended by Section 9 of the Act of July 2, 1926, precluded the superintendent of a Government hospital, which was not under the supervision of the Veterans' Bureau, from deducting the cost of board in such hospital from the pension of an insane veteran of the Spanish-American War, in the absence of a finding by the Director of the Veterans' Bureau that the veteran was entitled to the benefits of the Act.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra*, pp. 22–27.

STATEMENT

The findings of fact of the Court of Claims (R. 5–8) may be summarized as follows:

The petitioner enlisted in the United States Army on November 30, 1897, and, having served three enlistments, was honorably discharged on January 25, 1907 (R. 5–6). In the course of these enlistments, the petitioner served in the Spanish-American War and the Philippine Insurrection (R. 6).

In May, 1911, the petitioner was indicted in the District of Columbia for assault with a deadly weapon, was adjudged by a jury to be of unsound mind, and was thereafter committed to the Government Hospital for the Insane (now St. Eliza-

beths Hospital) by the Secretary of the Interior, who directed that if the petitioner be not indigent his estate be charged with the expense of his support in that institution (R. 6). The petitioner remained in St. Elizabeths Hospital from June 19, 1911, until April 25, 1930, during which time he was suffering from a psychiatric ailment and was of unsound mind (R. 6–7). On the latter date he was released in the custody of his brother (R. 7), and on March 10, 1933, was adjudged by the Supreme Court of the District of Columbia to be of sound mind (R. 8).

On April 21, 1922, the petitioner's claim for a pension was allowed, effective August 8, 1921, and a pension certificate was issued to him (R. 6). The pension was paid periodically to the Superintendent of St. Elizabeths Hospital for the petitioner's account. At the time of the petitioner's discharge the amounts so paid aggregated $4,036 (R. 6–7). Upon the discharge of the petitioner from the hospital, the sum of $776.83, which had been expended on clothing, and a charge of $3,259.17, for board from May 7, 1922, to February 6, 1930, were deducted from the pension money which had been received on his account (R. 7). The petitioner protested against the refusal of the hospital to pay over to him the money which had been deducted for board, although during the time he had been confined in the hospital no claim had been made on his behalf as to his right to receive the pension without deduction (R. 7).

On June 23, 1930, an application was made to the Director of the Veterans' Bureau on behalf of the petitioner for an order authorizing and directing his hospitalization at St. Elizabeths Hospital from the effective date of the World War Veterans' Act of 1924 to the date of his discharge (R. 8). The Director found that no application for the hospitalization of the petitioner had been filed while the petitioner required hospitalization, and held that he was without authority of law to issue a retroactive order directing hospitalization (R. 8). On August 13, 1931, the Veterans' Bureau issued a certificate recognizing the petitioner as a veteran of the Spanish-American War and declaring him to be entitled to hospitalization if required, when duly authorized by the Bureau (R. 8).

St. Elizabeths Hospital has never been under the control of the Veterans' Bureau, but the Bureau has the right to, and does, use that institution for the care of insane veterans (R. 8).

The petitioner brought suit in the Court of Claims, alleging that under Section 202 (10) of the World War Veterans' Act of 1924, as amended, he was entitled to hospitalization as an insane veteran of the Spanish-American War without deduction from his pension for the cost of his maintenance in the hospital, and asking judgment for the amount deducted on account of board. The court held that his right to hospitalization under that section was a matter for the Director of the Vet-

erans' Bureau alone to determine, and that since the Director had not passed on the facts the court was without authority to allow recovery.

SUMMARY OF ARGUMENT

I

The instant case turns upon the question whether a person is "entitled to hospitalization" under Section 202 (10) of the World War Veterans' Act of 1924, as amended by Section 9 of the Act of July 2, 1926 (*infra*, p. 24), in the absence of a finding by the Director of the Veterans' Bureau that he is a veteran and is suffering from one of the diseases specified in that section. If a finding by the Director is not necessary, and the existence of the requisite facts may be determined by a court, then the petitioner should have judgment. But we submit that the Act confers upon the Director alone authority to decide who is entitled to hospitalization and that a favorable finding by the Director is a condition precedent to the right to the benefits of the Act.

Administration of the various Acts for the relief of veterans has been entrusted to the Director of the Veterans' Bureau.[1] The World War Veterans' Act of 1924, like other Acts having to do with vet-

[1] In 1930 the Veterans' Bureau was merged in the Veterans' Administration, and the title "Director" was changed to "Administrator." In this brief the terms are used interchangeably.

erans, authorizes the Director to make such rules and regulations as may be necessary and declares that his decision on all questions of fact shall be conclusive. Provisions of this nature have been generally held to preclude the courts from reviewing the Director's findings, and we submit that upon similar principles the courts may not assume the functions of the Director by making findings when he has failed to do so.

The departmental interpretation of the statute here under discussion has always been that no veteran is entitled to the benefits of the Act until the Director has so determined. Thus the Comptroller General has ruled that the pension of a veteran is subject to deductions for the cost of his maintenance in St. Elizabeths Hospital until the veteran has been transferred to the rolls of the Veterans' Bureau and the Bureau has assumed payment of the expenses incident to his hospitalization. And the Director of the Bureau has provided by regulation that no veteran will be transferred to the Bureau rolls until the Bureau has had an opportunity of passing upon his eligibility and need for hospitalization. Although Congress has several times amended the statutes in question, no remedial legislation has been addressed to these rulings.

The Act itself draws no distinction between persons of unsound mind and those suffering from other ailments. If an insane person is entitled to hospitalization without a finding to that effect by

the Director, so are all other veterans. But we submit that the intention of Congress that the Director should be the sole and final judge as to who is entitled to hospitalization is clearly disclosed.

While it may be that either the Superintendent of the hospital or the Director of the Bureau should have taken steps to protect the petitioner's interests, their failure to do so, we submit, does not justify the courts in determining facts upon which the Director alone was authorized to pass.

II

If the decision below is erroneous, nevertheless the petitioner may recover only such part of his pension as was charged with his board after July 2, 1926, the effective date of the amendment to the World War Veterans' Act of 1924. The 1926 Act is not in terms retroactive, and the affirmative intention of Congress that it should operate only prospectively is evidenced by the fact that a proviso for the repayment of any deductions theretofore made was eliminated from the bill prior to its passage.

ARGUMENT

I

Section 202 (10) of the World War Veterans' Act of 1924, as amended by Section 9 of the Act of July 2, 1926 (*infra*, p. 24), declares that all hospital facilities under the control and jurisdiction of the Veterans' Bureau shall be available for, among

others, veterans of the Spanish-American War who are suffering from neuropsychiatric ailments, and contains the following proviso:

> *And provided further,* That the pension of a veteran entitled to hospitalization under this subdivision shall not be subject to deduction, while such veteran is hospitalized in any Government hospital, for board, maintenance, or any other purpose incident to hospitalization: * * *

The court below found that the petitioner is a veteran of the Spanish-American War and that he was suffering from a neuropsychiatric ailment during the time he was confined in Saint Elizabeths Hospital. The petitioner contends that on the basis of these facts he was "entitled to hospitalization" within the meaning of the proviso quoted above, and that, consequently, the statute precluded the deduction from his pension of the cost of his maintenance while in the hospital.

It may be conceded at the outset that if a court may determine whether a person is entitled to hospitalization under the statute when the Director of the Veterans' Bureau has not passed upon the facts of the case, the petitioner has stated and proved a good cause of action, and the court below erred in rendering judgment in favor of the United States. It may also be admitted that the decision below works an apparent hardship upon the petitioner in that it denies him recovery by reason of an omission for which he cannot be held at fault. In spite,

however, of the very apparent equities in favor of the petitioner, we are constrained to the belief that the decision below is correct as a matter of law, and that the statute furnishes no basis for an exception in favor of the petitioner on the ground that he was of unsound mind and therefore unable to apply for its benefits.

The petitioner's argument is that he was "entitled to hospitalization" within the meaning of the proviso quoted above because the provision in Section 202 (10) that hospital facilities "shall be available" for honorably discharged veterans of the Spanish-American War who are suffering from neuropsychiatric ailments is mandatory, and the right to hospitalization is not dependent on any finding by the Director of the Veterans' Bureau as held by the court below. (Br. 6–7.) This argument appears to rest on a misconception of the Government's position and of the decision below. It is not necessary to consider whether the Director of the Veterans" Bureau, having determined that an applicant was a veteran afflicted with one of the specified ailments, might in his discretion refuse hospitalization. As to this question, the suggested distinction between veterans suffering from one of the named diseases and those whom the Director is authorized to hospitalize "so far as he shall find that existing Government facilities permit", without regard to the nature of their disabilities, seems plausible. Our contention is simply that the stat-

ute confers upon the Director *alone* authority to decide as a matter of fact whether a person claiming benefits under the Act is, first, a veteran and, second, in need of hospitalization, and that in the absence of a finding by the Director as to these facts no one is "entitled to hospitalization" within the meaning of the proviso.

During the World War and after its termination several Acts were passed for the relief of disabled veterans, and in 1921 the Veterans' Bureau was created as an independent bureau of the Government for the purpose of administering those Acts. Act of August 9, 1921, c. 57, 42 Stat. 147. By the World War Veterans' Act of 1924, which codified, revised and reenacted the laws relating to veterans' relief, certain benefits conferred upon veterans of the World War were likewise extended to veterans of the Spanish-American War, the Philippine Insurrection and the Boxer Rebellion. The enforcement of Acts granting pensions to veterans of wars prior to the World War remained, however, the duty of the Commissioner of Pensions, who was an officer in the Interior Department, until 1930, when the entire program of pensions and relief for veterans of all wars was consolidated and transferred to the Veterans' Administration. Act of July 3, 1930, c. 863, 46 Stat. 1016. Thus there has grown up a definite, unified system for the administration of veterans' benefits, and there now exists a body of laws and

regulations governing veterans' affairs, the enforcement of which has been entrusted primarily to the Director of the Veterans' Bureau, now the Administrator of Veterans' Affairs.

In *United States* v. *Jefferson Electric Manufacturing Co.*, decided February 12, 1934, No. 171, October Term, 1933, this Court said:

> As a general rule where the legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, excepting as a different purpose is plainly shown.

See *Panama R.R. Co.* v. *Johnson*, 264 U.S. 375, 384; *United States* v. *Sweet*, 245 U.S. 563, 572; *United States* v. *Barnes*, 222 U.S. 513, 520.

Applying this principle to the instant case, the proviso in Section 202 (10) must, we submit, be construed as a part of the unified system for the administration of veterans' benefits and carried into effect in a manner conformable to it.

Section 5 of the World War Veterans' Act of 1924 (*infra*, p. 23) provides that the Director of the Veterans' Bureau shall administer, execute and enforce the provisions of the Act, that he shall have full authority and power to make rules and regulations necessary or appropriate to carry the Act into effect, and that his decisions on questions of

fact affecting any claimant to the benefits of Title II of the Act shall be conclusive, except as otherwise provided. Similar discretionary power has been conferred upon the Director by other statutes having to do with veterans' affairs,[2] and it has been generally held that in the absence of a plain abuse of discretion courts are powerless to review his findings. This Court has so held in *Silberschein* v. *United States*, 266 U.S. 221, in relation to the War Risk Insurance Act; in *United States* v. *Williams*, 278 U.S. 255, in relation to the Adjusted Compensation Act; and in *Meadows* v. *United States*, 281 U.S. 271, in respect of the reinstatement of a war-risk insurance policy. Decisions of the lower Federal courts are to the same effect. *Kalasanckas* v. *Hines*, 38 F. (2d) 389 (App.D.C.), certiorari denied, 282 U.S. 837; *United States ex rel. Bowling* v. *Hines*, 50 F. (2d) 330 (App.D.C.); *Hines* v. *Starnes*, 26 F. (2d) 997 (App.D.C.); *Hines* v. *Welch*, 23 F. (2d) 979 (App.D.C.); *Armstrong* v. *United States*, 16 F. (2d) 387 (C.C.A. 8th); *Forbes* v. *Welch*, 286 Fed. 765 (App.D.C.).

The proviso here in question exempts from deductions for costs incident to hospitalization the pensions of veterans "entitled to hospitalization under this subdivision." The subdvision is a part

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[2] See Section 13 of the War Risk Insurance Act as amended by the Act of October 6, 1917, c. 105, 40 Stat. 398, 399; Section 2 of the Act of August 9, 1921, c. 57, 42 Stat. 147, 148; Section 310 of the Adjusted Compensation Act as amended by the Act of July 3, 1926, c. 751, 44 Stat. 826, 828.

of Title II and, as has been observed, Section 5 declares that the Director shall administer the provisions of the Act and that his decisions on questions of fact "affecting any claimant to the benefits of Title II" shall be conclusive.[3] We submit, therefore, that it was plainly the intention of Congress that the Director, and he alone, should have power to determine the facts establishing the right to hospitalization under Section 202 (10). It is not inconceivable that had the Director caused the petioner to be examined in 1926, when the proviso was enacted, he would have determined that he was not then afflicted with a neuropsychiatric ailment. Such a finding would have been conclusive. See *Hines* v. *Starnes, supra.*

It is to be observed that the petitioner was committed to Saint Elizabeths Hospital in 1911 by the Secretary of the Interior under the Act of April 14, 1906 (*infra*, p. 22), as a person adjuged insane by a jury in the Supreme Court of the Dis-

[3] A provision very similar to that involved here appeared in a bill (H.R. 8132) introduced in 1926 to effect certain changes and increases in the pensions payable to veterans of the Spanish-American War. See H.Rep. No. 338, 69th Cong., 1st Sess.; Cong. Record, 69th Cong., 1st Sess., p. 6909. It was, however, eliminated by the Senate (Cong. Record, 69th Cong., 1st Sess., p. 7534) and did not appear in the bill as finally enacted. Act of May 1, 1926, c. 209, 44 Stat. 382. Thus, instead of being enacted as part of a statute the enforcement of which was entrusted to the Commissioner of Pensions (44 Stat. 383), it was made a part of the general veterans' relief legislation under the jurisdiction of the Veterans' Bureau.

trict of Columbia. The fact that he was a veteran of the Spanish-American War had nothing to do with either his commitment or his detention in the hospital, and at no time was he "hospitalized" as a patient of the Veterans' Bureau.

At the time of the enactment of the World War Veterans' Act of 1924, which authorized the hospitalization of veterans of the Spanish-American War, the Philippine Insurrection and the Boxer Rebellion, but which contained no provision in respect of deductions from pensions, a number of these veterans were patients in hospitals which, like Saint Elizabeths, were not under the jurisdiction of the Veterans' Bureau. The Act of February 2, 1909 (*infra*, p. 22), provided that the pension due any pensioner who was an inmate of Saint Elizabeths' Hospital should be paid to the superintendent or disbursing agent of the hospital and should be applied, in part, to the patient's board and maintenance.[4] That Act was in effect when the petitioner's pension was first allowed and remained in effect, except as modified by the 1926 amendment to the World War Veterans' Act, during the whole time the petitioner was confined in the hospital. It was under the supposed authority

[4] The Secretary of the Interior was authorized to provide by regulations for the distribution of the pension, and under regulations promulgated May 1, 1909, part was reserved for the pensioner's use, part paid to his dependents, and the remainder applied to his board and maintenance.

of that Act that the deductions involved here were made.

Under the Act of June 5, 1924, c. 264, 43 Stat. 390, 429, and subsequent Acts appropriating funds for Saint Elizabeths Hospital, all Government departments were required to reimburse the hospital for the care of patients for whom such departments were responsible. Following the passage of that Act and the World War Veterans' Act of 1924, the question arose whether the pensions of veterans confined in Saint Elizabeths Hospital as patients of the Veterans' Bureau remained subject to deductions for board and maintenance under the Act of 1909, or whether the expenses incident to their hospitalization should be paid in full by the Bureau. In an opinion rendered to the Secretary of the Interior in 1924 the Comptroller General held that the Act of February 2, 1909, had not been repealed but was still applicable to veterans confined in Saint Elizabeths, notwithstanding the fact that they were there as patients of the Veterans' Bureau, and that consequently the Bureau should reimburse the hospital only to the extent that the pension was insufficient to meet the cost of maintenance. 4 Comp. Gen. 445.

Following the enactment of the Act of July 2, 1926, amending Section 202 (10) of the 1924 Act, the Secretary of the Interior requested the Comptroller General to give an opinion as to the pro-

cedure to be followed in respect of veterans who had been confined in the hospital by Government agencies other than the Veterans' Bureau. The Comptroller General thereupon rendered an opinion in which, considering the precise question involved in this case, he held that a veteran was not "entitled to hospitalization" under the Act until the Director of the Veterans' Bureau had so found, and that, accordingly, his pension remained subject to charges under the Act of 1909 until he was taken over by the Bureau as its patient. 6 Comp. Gen. 126.[5] Since that time numerous amendments have been made to the World War Veterans' Act of 1924 for the purpose of clarifying some of its terms and enlarging the scope of vet-

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[5] Language similar to that employed in the proviso here under discussion appears in the Act of June 11, 1930, c. 462, 46 Stat. 556, which provides:

"That retired enlisted men of the Navy and Marine Corps and transferred members of the Fleet Naval Reserve and Fleet Marine Corps Reserve, transferred thereto after sixteen or more years' service, shall be considered to be veterans within the meaning of the laws relating to hospitalization under the Veterans' Bureau, and shall be entitled to medical treatment or hospitalization at all Government hospitals without deduction from their retired pay or retainer pay of the sum of 75 cents per day for hospital rations while in a Government hospital."

This Act has been held to mean that where beneficiaries thereof are admitted to Naval hospitals on their own application and without reference to the Veterans' Bureau their retired pay is subject to deductions for rations. 10 Comp. Gen. 94.

erans' relief.[6] No remedial legislation, however, has been addressed to the ruling that until a veteran has become a beneficiary of the Veterans' Bureau his pension remains subject to deduction for hospital expenses.

In order that such veterans as were already in hospitals might be transferred to the rolls of the Veterans' Bureau and the cost of their maintenance might be assumed by the Bureau and paid out of funds appropriated for that purpose, it was necessary that some procedure be formulated for identifying them and determining their eligibility. Accordingly, in 1926 the Bureau promulgated regulations (Reg. 155, Sec. 9121, *infra*, p. 25) which, after reciting the terms of the proviso in respect of deductions from pensions, provided that no veteran already hospitalized under the jurisdiction of another Government department would be transferred to the jurisdiction of the Bureau except upon proper application "to be submitted in accordance with existing instructions" and approved in the first instance by the medical director.[7] This

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[6] Acts of May 29, 1928, c. 875, 45 Stat. 964, 967; July 3, 1930, c. 849, 46 Stat. 991, 1000; May 21, 1932, c. 201, 47 Stat. 164; June 24, 1932, c. 276, 47 Stat. 334.

[7] Although this appears to have been the first formal regulation on the subject, the Solicitor of the Bureau had previously rendered an opinion to the same effect. See *Digests of Legal Opinions Relating to Veterans' Bureau* (1926), Vol. 2, Par. 1168. Prior to the Act of July 2, 1926, as has been observed, the transfer of a hospitalized veteran to the rolls of the Bureau was a matter affecting only the Bureau itself and the hospital in question.

regulation was subsequently reissued in identical language on August 25, 1928, and was amplified in Regulations 6056 and 6059, effective June 16, 1931 (*infra*, pp. 26–27). The instructions referred to related to the procedure to be followed in determining the applicant's status as a veteran and the need of hospital treatment. See General Order No. 292–C, Veterans' Bureau Regulations and Procedure, 1928, Part 1, p. 938.

It thus appears that both the General Accounting Office and the Veterans' Bureau have construed the Act in question as making determination of the facts by the Director of the Bureau a condition precedent to the right of hospitalization. This interpretation of the Act by those directly concerned with its administration is, we submit, entitled to great weight and, as this Court has frequently held, should not be overturned except for cogent reasons. *Norwegian Nitrogen Products Co.* v. *United States*, 288 U.S. 294, 315; *Fawcus Machine Co.* v. *United States*, 282 U.S. 375.

It is suggested in the brief in support of the petition for certiorari (pp. 7–8) that to deny the petitioner the benefits of the statute because he made no application therefor is unreasonable and unjust, since he was of unsound mind. The Act itself, however, draws no distinction between a veteran suffering from a neuropsychiatric ailment and one afflicted with tuberculosis, paralysis agitans, en-

cephalitis lethargica, amoebic dysentery or the loss of the sight of both eyes. Veterans suffering from these various diseases are all grouped together, and if one is "entitled to hospitalization" without a finding by the Director of the Veterans' Bureau to that effect, there is no basis in the statute for saying that others are not likewise entitled to the benefits of the Act regardless of any action on the part of the Director. We submit, however, that the Act cannot be thus construed.

It may be that the Superintendent of Saint Elizabeths Hospital should have applied to the Veterans' Bureau in the petitioner's behalf, or that the Director of the Bureau (assuming that he was, or should have been, aware of the petitioner's existence) should have taken the initiative in determining whether the petitioner was entitled to the benefits of the Act. But we find it difficult to perceive how the existence of such a duty on the part of the Superintendent or the Director could avail the petitioner anything in this action. The petitioner's contention is that the Superintendent was without authority of law to make the deductions from his pension. If, however, our interpretation of Section 202 (10) is correct, the authority of the Superintendent to make such deductions continued until such time as the Director might find that the petitioner was entitled to hospitalization under that section. Since the Director never made such a finding, the ultimate question is whether a

court may substitute itself in his place and find the facts in the petitioner's favor. It is well settled that courts "cannot enforce rights which are dependent for their existence upon a prior performance by an executive officer of certain duties he has failed to perform." *United States* v. *McLean,* 95 U.S. 750, 753. See also *Dunlap* v. *United States,* 173 U.S. 65; *Smith* v. *United States,* 56 F. (2d) 636 (S.D.Iowa); *Anderson* v. *United States,* 5 F.Supp. 269 (E.D.Ky.). We submit, therefore, that the court below was right in holding that it was without authority to decide whether the petitioner was entitled to hospitalization or to entertain a case which depends upon the determination of that question.

II

Even should this Court be of the opinion that the proviso in Section 202 (10) as amended is to be construed and applied in accordance with the petitioner's contention, we submit that the petitioner is entitled to recover only such deductions as were made from his pension on account of board subsequent to July 2, 1926. There is nothing to indicate that the proviso was intended to operate retroactively. On the other hand, the bill as passed by the House contained a retroactive provision which was eliminated by the Senate. That provision read as follows (Cong. Record, 69th Cong., 1st Sess., pp. 9553, 9565):

> *Provided,* That where any such deductions have heretofore been made, the director of the United States Veterans' Bureau is hereby authorized and directed, out of any current administrative appropriations, to reimburse such veterans in an amount equal to such deduction.

It seems clear, therefore, that Congress intended that the operation of the proviso should be prospective only.

CONCLUSION

We submit that the decision below is correct and should be affirmed.

Respectfully submitted.

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APRIL 1934.

APPENDIX

STATUTES

The Act of April 14, 1906, c. 1624, 34 Stat. 113, provides in part:

> * * * whenever a person is indicted or is charged by an information for an offense, and before trial or after a verdict of guilty, prima facie evidence is submitted to the court that the accused is then insane, the court may cause a jury to be impaneled * * * to inquire into the insanity of the accused * * *. If the jury shall find the accused to be then insane, * * * the court may certify the fact to the Secretary of the Interior, who may order such person to be confined in the hospital for the insane, and said person and his estate shall be charged with the expense of his support in the said hospital. * * *

The Act of February 2, 1909, c. 58, 35 Stat. 592 (U.S.C., Title 24, Sec. 165), provides in part:

> * * * During the time that any pensioner shall be an inmate of the Government Hospital for the Insane, all money due or becoming due upon his or her pension shall be paid by the pension agent to the superintendent or disbursing agent of the hospital, upon a certificate by such superintendent that the pensioner is an inmate of the hospital and is living, and such pension money shall be by said superintendent or

> disbursing agent disbursed and used, under regulations to be prescribed by the Secretary of the Interior, for the benefit of the pensioner, * * * and to pay his or her board and maintenance in the hospital, * * *.

Section 5 of the World War Veterans' Act, 1924, c. 320, 43 Stat. 607, 608 (U.S.C., Title 38, Sec. 426) provides as follows:

> SEC. 5. The director, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this Act, and for that purpose shall have full power and authority to make rules and regulations, not inconsistent with the provisions of this Act, which are necessary or appropriate to carry out its purposes, and shall decide all questions arising under this Act and all decisions of questions of fact affecting any claimant to the benefits of Title II, III, or IV of this Act, shall be conclusive except as otherwise provided herein. All officers and employees of the bureau shall perform such duties as may be assigned them by the director. All official acts performed by such officers or employees specially designated therefor by the director shall have the same force and effect as though performed by the director in person. Wherever under any provision or provisions of the Act regulations are directed or authorized to be made, such regulations, unless the context otherwise requires, shall or may be made by the director. The director shall adopt reasonable and proper rules to govern the procedure of the divisions and to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnish-

ing the same in order to establish the right to benefits of compensation, insurance, vocational training or maintenance and support allowance provided for in this Act, the forms of application of those claiming to be entitled to such benefits, the methods of making investigations and medical examinations, and the manner and form of adjudications and awards.

Section 202 (10) of the World War Veterans' Act, *supra*, as amended by Section 9 of the Act of July 2, 1926, c. 723, 44 Stat. 790, 794, 796 (U.S.C. App., Title 38, Sec. 484), provides:

> SEC. 202. (10). That all hospital facilities under the control and jurisdiction of the bureau shall be available for every honorably discharged veteran of the Spanish-American War, the Philippine insurrection, the Boxer rebellion, or the World War suffering from neuropsychiatric or tubercular ailments and diseases, paralysis agitans, encephalitis lethargica, or amoebic dysentery, or the loss of sight of both eyes, regardless whether such ailments or diseases are due to military service or otherwise, including traveling expenses as granted to those receiving compensation and hospitalization under this Act. The director is further authorized, so far as he shall find that existing Government facilities permit, to furnish hospitalization and necessary traveling expenses incident to hospitalization to veterans of any war, military occupation, or military expedition, * * * not dishonorably discharged, without regard to the nature or origin of their disabilities: * * * *Provided*, That preference to admission to any Government hospital for hospitalization under the provisions of this subdivision shall

be given to those veterans who are financially unable to pay for hospitalization and their necessary traveling expenses: * * * *And provided further,* That the pension of a veteran entitled to hospitalization under this subdivision shall not be subject to deduction, while such veteran is hospitalized in any Government hospital, for board, maintenance, or any other purpose incident to hospitalization: *Provided further,* That the Act of May 4, 1898, entitled "An Act making appropriations for the naval service for the fiscal year ending June 30, 1899, and for other purposes," the Act of February 28, 1861, as amended by the Act of February 2, 1909, relative to the Government hospital for the insane in the District of Columbia, or any other Act, insofar as they are inconsistent with the provisions of this section be, and they are, hereby modified accordingly.

REGULATIONS

Section 9121 of Veterans' Bureau Regulation No. 155, promulgated September 15, 1926 (U.S. Veterans' Bureau Regulations and Procedure, 1928, Part 1, p. 187), provided:

SEC. 9121. The pension of a veteran entitled to hospitalization under section 202 (10) of the World War veterans' act, as amended, shall not be subject to deduction for board, maintenance, or any other purpose incident to hospitalization while such veteran is hospitalized in any Government hospital. When a pensioner entitled to hospitalization under section 202 (10) of the World War veterans' act, as amended, is already hospitalized by authority of and under the jurisdiction of a department other

than the United States Veterans' Bureau, such patient will not be transferred to the jurisdiction of the United States Veterans' Bureau except on proper application to be submitted in accordance with existing instructions, such application to be forwarded to central office for recommendation by the medical director to the director for approval. (September 30, 1926.)

This section was reissued on November 15, 1926, as a part of Regulation No. 160 (p. 189) and again on August 25, 1928, as Section 9122 of Regulation No. 196 (p. 220).

The practice of the Bureau with respect to pensioners already hospitalized by authority of another Federal agency was later set forth in more detail in paragraphs 6056 and 6059 of the Regulations, effective June 16, 1931. These paragraphs read as follows:

6056. *Disposition of Already Hospitalized Veterans.*—If retired army or navy (including marine corps) personnel, or other persons specified in paragraph 6048 who are potentially entitled to hospitalization under section 202 (10) World War veterans' Act, 1924, as amended, have been admitted to an army or navy hospital upon authorization other than that of the Veterans' Administration, the expense of such hospitalization will not be assumed until authorization is issued for the placing of the names of such persons on the rolls of Veterans' Administration beneficiaries in such hospitals, or for the transfers of such persons to United States veterans' hospitals. The fact that another federal agency has already hospitalized such persons will not automatically entitle them to be taken over by the Veterans'

Administration. They will be required to apply, or, if they are incompetent, their legally appointed guardians, near relatives, or the hospital heads will apply for them, to be hospitalized under section 202 (10) World War veterans' Act, 1924, as amended. Their eligibility therefor having been determined, their names will be placed on the list of those awaiting available beds, in the order of dates of application; and, unless an emergency is satisfactorily shown, such persons will not be granted priority in the furnishing of available beds over other applicants whose names precede theirs on the said lists. (June 16, 1931.)

6059. *Disposition of Pensioners Hospitalized by Federal Agencies Other Than the Veterans' Administration.*—When a pensioner entitled to hospitalization under section 202 (10) World War veterans' Act, 1924, as amended, is already hospitalized by authority of any federal agency other than the Veterans' Administration, the issuance of authorization for the placing of such pensioner's name on the rolls of Veterans' Administration patients at the institution where he is already hospitalized, or for his transfer therefrom to a United States veterans' hospital, will be governed by the conditions specified in paragraph 6056. (June 16, 1931.)"

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